

IN THE
SUPREME COURT OF THE UNITED STATES

LUKE WAINE CAINES, JR.,
PETITIONER

V.

JOSIE GASTELO, WARDEN
RESPONDANT

CASE NO. 17-8780
PETITION FOR REHEARING
UNDER THE RULES OF THE
SUPREME COURT OF THE
UNITED STATES, RULE 44.

INTRODUCTION

I, LUKE WAINE CAINES, JR., PETITIONER IN THE ABOVE MATTER DOES HEREBY PETITION THIS
HONORABLE COURT AND ITS ASSOCIATES FOR A REHEARING OF THE ORDER DENYING HIS PETIT-
ION FOR WRIT OF CERTIORARI ON THE FOLLOWING COMPELLING GROUNDS:

GROUND ONE

THE TRIAL COURT SUBJECTED THE DEFENDANT TO MANIFESTLY UNJUST PROCEEDURES RESULTING
IN A MISCARRIAGE OF JUSTICE BY ALLOWING A TRIAL JUROR WITH ACTUAL BIAS AND A KNOWN
MENTAL ILLNESS CALLED BIPOLAR DISORDER TO REMAIN ON THE JURY PANEL, IN VIOLATION OF
PETITIONERS SIXTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION.

GROUND TWO

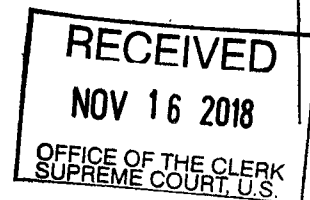
THE PETITIONERS CONVICTION WAS BASED ON EVIDENCE THAT FAILS TO MEET THE WINSHIP
STANDARD, IN VIOLATION OF HIS FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS.

GROUND THREE

THE TRIAL COURTS ARBITRARILY DISREGARD FOR ITS OWN SENTENCING LAWS AND IMPOSITION
OF AN UNAUTHORIZED ILLEGAL SENTENCE VIOLATED THE PETITIONERS FOURTEENTH AMENDMENT
RIGHT TO DUE PROCESS AND FUNDAMENTAL FAIRNESS DURING SENTENCING.

GROUND FOUR

COUNSELS CUMULATIVE ERRORS DEPRIVED THE PETITIONER OF HIS SIXTH AMENDMENT RIGHT TO
EFFECTIVE ASSISTANCE OF COUNSEL AND A FAIR TRIAL GUARANTEED BY THE UNITED STATES
CONSTITUTION.



PRAYER FOR RELIEF

1 PETITIONER PRAYES THAT THIS HONORABLE COURT AND IT'S HONORABLE ASSOCIATES PLEASE
2 RECONSIDER THE GROUNDS HE HAS PRESENTED IN GOOD FAITH AND NOT FOR DELAY AND GRANT
3 HIM RELIEF ON HIS CLAIMS FOR THE FOLLOWING COMPELLING REASONS:

4 COMPELLING REASON ONE

5 THE CLAIMS ARE MERITOTIOUS, NOT LACKING ANY FACTUAL BASES FROM THE RECORD AND ARE
6 VIOLATIONS OF CONSTITUTIONAL MAGNITUDE.

7 COMPELLING REASON TWO

8 THE IMPORTANCE OF THE PARTICULAR ISSUES WITH TJ06 IS BEYOND THE PARTICULAR FACTS
9 AND PARTIES INVOLVED AND IS OF PUBLIC IMPORTANCE.

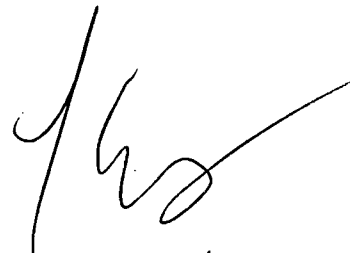
10 COMPELLING REASON THREE

11 CASE LAW IS SPARCE IN THE UNITED STATES AND IN THE NINTH CIRCUIT AS THERE IS NO
12 AUTHORITATIVE, CONCLUSIVE OFFICIAL RULING ON THE EXPLICIT ISSUE OF "WHETHER OR NOT
13 IT IS PERMISSIBLE TO ALLOW A PERSON TO SERVE AS A JUROR WITH THE PRECISE MENTAL
14 ILLNESS KNOWN AS BIPOLAR DISORDER WITHOUT VIOLATING A DEFENDANTS SIXTH AMENDMENT
15 RIGHT TO A FAIR TRIAL BY 12 MENTALLY COMPETENT JURORS AND HIS FOURTEENTH AMENDMENT
16 RIGHT TO DUE PROCESS".

17 PETITIONER ALSO PRAYS THAT THIS COURT GRANT AN EVIDENTIARY HEARING ON THE CLAIMS
18 AND MAKE A DEFINATIVE RULING ON THOSE CLAIMS AND GRANT ANY RELIEF THE COURT DEEMS
19 NECESSARY IN ORDER FOR THE PETITIONER TO SECURE HIS RIGHTS GUARANTEED BY THE GREAT
20 CONSTITUTION.

21 SINCERLY AND HUMBLY SUBMITTED,

22 LUKE WAINE CAINES, JR.,

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11-6-18

GROUND ONE

THE TRIAL COURT SUBJECTED THE DEFENDANT TO MANIFESTLY UNJUST PROCEEDURES RESULTING IN A MISCARRIAGE OF JUSTICE BY ALLOWING A TRIAL JUROR WITH A MENTAL DISORDER KNOWN AS BIPOLAR DISORDER AND ACTUAL BIAS TO REMAIN ON THE JURY PANEL, IN VIOLATION OF PETITIONERS SIXTH AND FOURTEENTH AMENDMENTS.

1 APPLICABLE LAW:

2 THE SIXTH AMENDMENT REQUIRES THAT THE JURY GUARANTEED TO THE DEFENDANT BE IMPART-
3 IAL; THE TRIAL COURT IS RESPONSIBLE FOR ENSURING THAT THE DEFENDANT RECEIVES AN
4 IMPARTIAL JURY. (U.S. CONST. AMEND VI). BIAS MAY BE INFERRED FROM CERTAIN "EXCEP-
5 TIONAL" CIRCUMSTANCES THAT "LEAVE SERIOUS QUESTION WHETHER THE TRIAL COURT SUBJEC-
6 TED THE DEFENDANT TO MANIFESTLY UNJUST PROCEEDURES RESULTING IN A MISCARRIAGE OF
7 JUSTICE". (SMITH V. PHILLIPS, 455 U.S. 209, 222(1982)).

8 ACTUAL BIAS STANDARD:

9 ACTUAL BIAS IS TYPICALLY FOUND WHEN A PROSPECTIVE JUROR STATES THAT HE CANNOT BE
10 IMPARTIAL, OR EXPRESSES A VIEW ADVERSE TO ONE PARTY'S POSITION AND RESPONDS EQUIV-
11 OCALLY AS TO WHETHER HE COULD BE FAIR AND IMPARTIAL DESPITE THAT VIEW". (SEE FIE-
12 LDS V. BROWN, 503 F. 3d 755 AT 767, 779(9TH CIR. 2007); (RUDERMAN V. RYAN, 484 FED AP
13 PX. 144)).

14 IMPLIED BIAS STANDARD:

15 "BIAS IS PRESUMED WHERE A JUROR OR HIS CLOSE RELATIVES HAVE BEEN PERSONALLY INVOL-
16 VED IN A SITUATION INVOLVING SIMILAR FACT PATTERNS"(TINSLEY, 895 F.2d AT 528)(CIT
17 ING CASES).

18

FACT

19 HERE, TJ06 HAD BEEN INVOLVED IN A SIMILAR FACT PATTERN. DURING VOIR-DIRE, SHE INFO
20 RMED THE COURT THAT SHE WAS A "VICTIM OF ROBBERY".

21 MS. COHEN: I SUSPECT WE'RE GOING TO HEAR SOME EVIDENCE REGARDING DRUGS. DOES ANY-
22 BODY HAVE FAMILY SITUATIONS, PERSONAL SITUATIONS, THAT MAKES THAT A PARTICULARLY
23 HOT BUTTON ISSUE ? OKAY. IN THE BACK, (PROSPECTIVE JUROR).

24 PROSPECTIVE JUROR: YEAH MY EX WAS ADDICTED. MY EX WAS ADDICTED TO DRUGS AND HE ST-
25 OLE A LOT MONEY FROM ME.

26 MS. COHEN: OKAY THAT GOES TO THE QUESTION ABOUT BEING A VICTIM, SO YES. (SEE VOIR-
27 DIRE PAGE 89 9-13.). BIAS EXSIST IF THE JUROR A VICTIM OF ROBBERY AND DEFENDANT IS
28 CONVICTED OF ROBBERY. (SEE DEVITA V. MCCORKLE, 248 F.2d 1, 3).

1 APPLICABLE LAW:

2 THE SIXTH AMENDMENT "GUARANTEES TO THE CRIMINALLY ACCUSED A FAIR TRIAL BY A PANEL
3 OF IMPARTIAL, "INDIFERENT JURORS".(SEE IRVIN V. DOWD,366 U.S.717,722(1961). A JU-
4 ROR WHO HAS FORMED AN OPINION CANNOT BE IMPARTIAL Id. THE BIAS OR PREJUDICE OF EV-
5 EN A SINGLE JUROR VIOLATES A PETITIONER'S RIGHT TO A FAIR TRIAL(DYER V. CALDERON,
6 151 F.3d 970,973(9TH CIR. 1998)(en banc).

7 FACT

8 HERE, DURING VOIR-DIRE, TJ06 EQUIVOCATED ABOUT FAIRNESS TO SIT IN CASE DUE TO HAV-
9 ING A SETTLED OPINION ABOUT CERTAIN CLASSES OF PEOPLE AND ISSUES IN THE CASE.
10 MS. COHEN: OKAY. AND IF YOU WERE TO HEAR EVIDENCE OR TESTIMONY ABOUT PAST OR PRE-
11 SENT DRUG USE, WOULD IT AFFECT YOUR ABILITY TO BE FAIR ?

12 PROSPECTIVE JUROR: " IT MIGHT MAKE ME THINK, IF THEY'RE A DRUG USER, THAT THEY'RE
13 NOT UP AND UP, BECAUSE OF THE EXPERIENCE I WENT THROUGH (SEE VOIR-DIRE PAGE 89).

14 FACT

15 THE TRIAL COURT AT THIS TIME FAILED TO SUA SPONTE STRIKE TJ06 FOR ACTUAL AND OR IM-
16 PLIED BIAS DUE TO HER STATEMENTS DURING THE VOIR-DIRE PROCESS. (JUROR WHO EQUIVOC-
17 ATED ABOUT FAIRNESS TO SIT IN DRUG CASE SHOULD HAVE BEEN STRUCK)(SEE UNITED STATES
18 V. GONZALEZ,214 F.3d 1109(9TH CIR.2000);(SEE ALSO WHITE V. MITCHELL, 431 F.3d 517
19 (6TH CIR.))(JUROR ADMITTING BIAS SHOULD HAVE BEEN STRUCK).

20 APPLICABLE LAW:

21 THE SUPREME COURT HAS STATED "UNEQUIVOCALLY" THAT A DEFENDANT HAS A RIGHT TO A TR-
22 BUNAL BOTH IMPARTIAL AND MENTALLY COMPETENT TO AFFORD A FAIR HEARING"". (SEE DEERE
23 V. CULLEN, 718 F. 3d 1124,1164(9TH CIR. 2013)QUOTING TANNER V. UNITED STATES,483
24 U.S. 107,126(1987)).

25 FACT

26 HERE, TJ06 LATER INFORMED THE TRIAL COURT OF HER MENTAL DISORDER.

27 THE COURT: TJ05-I'M SORRY, NOT TJ05.TJ06, WOULD YOU LIKE A CUP OF WATER ?

28 TJ06: I'M FINE.

1 THE COURT: IT'S IMPORTANT-WHEN I SEE PEOPLE'S EYES SHUT, I ASSUME THEY'RE DOZING.
2 TJ06: I'M NOT DOZING. I'M BIPOLAR, AND I HAD A BAD NIGHT LAST NIGHT.(SEE 2RT. 361-
3 62[DKT.NO.64-4AT171-172]).

4 FACT

5 THE TRIAL RECORD DOES NOT REVEAL THAT THE COURT HELD ANY HEARING TO DETERMINE (A).
6 THE EXTENT OF OR THE EXACT NATURE OR LEVEL OF THE JURORS MENTAL ILLNESS. (B). IF
7 TJ06 WAS TAKING ANY ANTI-PSYCHOTIC MEDICATIONS FOR HER MENTAL DISORDER. (C). WHAT
8 WERE THE SIDE EFFECTS IF ANY OF HER MENTAL DISORDER OR MEDICATION ? AND (D) WAS THE
9 JUROR MENTALLY COMPETENT OR SHOULD SHE BE REPLACED DUE TO HER MENTAL ISSNESS ?

10 CONCLUSION OF GROUND ONE

11 BASED ON THE ABOVE UNDISPUTED FACTS FROM THE RECORD, THE TRIAL COURT FAILED TO SUA
12 SPONTE REMOVE TJ06 WHO HAD AN ACTUAL DISQUALIFYING BIAS AND A MENTAL ILLNESS AND
13 THESE STRUCTURAL DEFECTS SUBJECTED THE DEFENDANT TO MANIFESTLY UNJUST TRIAL PROC-
14 EEDINGS RESULTING IN A MISCARRIAGE OF JUSTICE AND THERBY DEPRIVED PETITIONER OF HIS
15 SIXTH AND FOURTEENTH AMENDMENTS AND HE PRAY'S FOR RELIEF ON THIS CLAIM.

16 GROUND TWO

17 THE PETITIONERS CONVICTION WAS BASED ON EVIDENCE THAT FAILS TO MEET THE WINSHIP ST
18 -ANDARD. IN VIOLATION OF HIS FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS.

19 APPLICABLE LAW:

20 AS A MATTER OF FEDERAL CONSTITUTIONAL LAW THE DUE PROCESS CLAUSE PROTECTS THE ACCU
21 SED AGAINST CONVICTION EXCEPT UPON PROOF BEYOND A REASONABLE DOUBT OF EVERY FACT
22 NESCESSARY TO CONSTITUTE THE CRIME WITH WHIC HE IS CHARGED.(IN RE WINSHIP, 397 U.S.
23 358.364(1970)).(SEE ALSO HERRERA V. COLLINS, 506 U.S. 390,402(1993), NOTHING THAT
24 A CONVICTION BASED ON EVIDENCE THAT FAILS TO MEET THE WINSHIP STANDARD IS AN INDE-
25 PENDANT CONSTITUTIONAL VIOLATION.

26 APPLICABLE LAW:

27 IN CALIFORNIA TO CONSTITUTE A VIOLATION OF KIDNAPPING FOR ROBBERY (209 (b)(1)),
28 THE MOVEMENT MUST BE SUBSTANTIAL AND BEYOND THAT MERELY INCIDENTAL TO THE COMMIS-

1 SION OF THE UNDERLYING ROBBERY. THE MOVEMENT MUST ALSO INCREASE THE RISK OF HARM
2 OVER AND ABOVE THAT NECESSARILY INVOLVED IN THE CRIME ITSELF.(DOMIGUEZ, (2006) 39
3 CAL. 4TH 1141,1152). THE MAJORITY AGREES THAT PENAL CODE § 209(b)(1), AGRAVATED KI-
4 DNAPPING REQUIRES CONSIDERATION OF FACTORS OTHER THAN ACTUAL DISTANCE. THE AMOUNT
5 OF DISTANCE TRAVELED, WHILE REMAINING A VALID CONSIDERATION "IS NOT THE ONLY ONE",
6 BUT, RATHER IS A PART OF THE LARGER CONSIDERATION OF THE SCOPE AND THE NATURE AND
7 THE CONTENT OF THE ENVIRONMENT (RAYFORD, 9 CAL. 4TH. 1,11,12; ALSO FLORES V. HALL,
8 (2009) U.S. DIST. LEXIS 15814). RAYFORD ALSO HELD WHETHER A PARTICULAR DISTANCE IS
9 SUBSTANTIAL IS NOT BASED SOLEY ON THE NUMBER OF "INCHES AND FEET" THAT THE VICTIM
10 IS MOVED, BUT ON AN OVERALL EVALUATION OF THE "CONTEXT OF THE ENVIRONMENT INWHICH
11 THE MOVEMENT OCCURED(RAYFORD,SUPRA,9 CAL. 4TH AT P. 12).

12 FACT

13 THE MOVEMENT IN THE INSTANT CASE DID NOT CHANGE THE CONTEXT OF THE GROUPS ENVIRON-
14 NMENT, AS IT WAS CONFINED TO A SMALL GEOGRAPHICAL LOCATION WHICH THEY WERE FAMILIAR
15 WITH,AND IT DID NOT PLACE ANY SIGNIFICANT IMPAIRMENT ON THE LIFE AND LIBERTY OF THE
16 GROUP TO CONSTITUTE A VIOLATION OF PENAL CODE § 209(b)(1).

17 APPLICABLE LAW:

18 IN SALAZAR, 33 CAL.APP. 4TH AT 348, THE COURTS HELD THE ASPORTATION ELEMENT INVOL-
19 VES COMPARISON OF THE VICTIMS PHYSICAL LOCATION "BEFORE AND AFTER" ASPORTATION,AND
20 IS SATISFIED WHEN THE VICTIM IS MOVED FROM A VISIBLE LOCATION TO A MORE SECLUDED
21 CONFINED AREA,(SEE ALSO DOMINGUEZ,SUPRA,39 CAL.4TH 1141).

22 FACT

23 THE RECORD SHOWS THAT THE GROUPS PHYSICAL LOCATION BOTH "BEFORE AND AFTER ASPOTAT-
24 ION" WAS RELATIVELY WITHIN THE SAME GENARAL OPEN AREA. THE GROUP WAS NOT TAKEN OUT
25 OF THE POTENTIAL VIEW OF OTHERS, NOR WERE THEY MOVED TO A MORE SECLUDED AREA. THIS
26 THERE WAS NO DECREASE IN THE LIKELYHOOD OF DETECTION.

27 APPLICABLE LAW:

28 THE COURT IN PEOPLE V. AGUILAR,120 CAL.APP.4TH AT 1046,1050,1052, HELD INCIDENTAL

1 OFTEN MEANS NESCESSARY TO COMIT THE CRIME, WASHINGTON, SUPRA, 127 CAL. APP. 4TH AT 279
2 HELD MOVEMENT OF BANK EMPLOYEES INSIDE BANK VAULT WAS NESCESSARY TO OBTAIN MONEY
3 AND MERELY INCIDENTAL (SEE ALSO HOARD, 103 CAL. APP. 4TH 615; DIAZ, 78 CAL. APP. 4TH 245
4 247; ALSO EARLY, SUPRA, 14 CAL. 3d. AT PP. 130, fn. 11).

5 FACT

6 HERE, THE RECORD SHOWS THE MOVEMENT IN THE INSTANT CASE WAS INCIDENTAL IN THAT IT WAS NESCESSARY TO
7 OBTAIN THE MONEY. MR. CREEL TESTIFIED "WE DIDNT HAVE THAT MUCH MONEY ON US. THE
8 NEXT THING I REMEMBER IS THAT "WE SAID WE NEEDED TO GO ACROSS THE STREET". THERE
9 WAS THE BANK... "SO WE NEEDED TO GO OVER TO THE BANK TO GET SOME MORE MONEY OUT".
10 (SEE 1 RT. P. 95). THE NEED TO GO TO THE BANK WAS FURTHER COORABORATED BY MR. PER-
11 INS WHO TESTIFIED "THAT HE SUGGESTED GOING ACROSS THE STREET TO HIS BANK TO GET MO
12 RE MONEY SINCE THE ATM SHUT DOWN AND WOULDN'T GIVE ANYMORE TRANSACTIONS (1 RT. P. 82).
13 (SEE ALSO 1 RT. P. 161, WHERE MR. RUGGE TESTIFIED HE SUGGESTED GOING TO THE RITE AID
14 THUS THE MOVEMENT SERVED TO FACILITATE THE ALLEGED CRIME AND WAS MERELY INCIDENTAL.
15 APPLICABLE LAW:

16 THE ASPORTATION ELEMENT ENCOMPASSES NOT ONLY PHYSICAL MOVEMENT BUT ALSO THE MANNER
17 OF THE CRIMES EXECUTION (MARTIENEZ, (1999) 20 CAL. APP. 4TH 225; ROBERTSON (2012) 208
18 CAL. APP. 4TH, 965; ORTIZ, SUPRA, 101 CAL. APP. 4TH. AT 414). THE ESSENCE OF KIDNAPPING
19 FOR ROBBERY IS THE INCREASED RISK OF HARM (RAYFORD, 9. CAL. 4TH. 1, 11, 12).

20 FACT

21 THE RECORD SHOWS THAT THE MOVEMENT WAS NOT "EXCESSIVE OR GRATUITOUS". THE GROUP DID
22 NOT GO TO ANY OTHER LOCATION OTHER THAN THE LOCATION THAT WAS NESCESSARY TO ACOMP-
23 LISH THE ORIGINAL GOAL OF OBTAINING \$ 600. NOR DID THE MOVEMENT INCREASE THE RISK OF
24 HARM, MR. PERKINS TESTIFIED "HE FIGURED OUT THE SAFTEST ROUT TO GET TO THE BANK,
25 WHICH WAS "DIRECTLY ACROSS THE STREET. (SEE 1 RT. P. 83).

26 CONCLUSION OF GROUND TWO

27 PETITIONER CONCLUDES THAT, WHEN VIEWED AS A WHOLE, THE CONTEXTUAL FACTORS INVOLVED
28 IN THIS CASE, WHETHER SINGULAR OR IN COMBINATION WERE INSUFICIENT TO CONSTITUTE A

1 A VIOLATION OF PENAL CODE § 209(b)(1). AND PETITIONER PRAYS FOR RELIEF ON THIS CLAIM.
2 OR ATLEAST AN EVIDENTIARY HEARING INVOLVING CAREFUL REVIEW OF ALL THE FACTORS TO
3 DETERMINE IF THE ALLEGED ACTS CONSTITUTE A VIOLATION OF PENAL CODE § 209 (b)(1).

4 GROUND THREE

5 THE TRIAL COURTS ARBITRARY DISREGARD FOR IT'S OWN SENTENCING LAWS AND IMPOSITION OF
6 AN UNAUTHORIZED SENTENCE VIOLATED THE PETITIONERS FOURTEENTH AMENDMENT RIGHTS TO
DUE PROCESS AND FUNDAMENTAL FAIRNESS DURING SENTENCING.

7 APPLICABLE LAW:

8 IN LIMITED CIRCUMSTANCES, THE MISAPPLICATION OF A STATE SENTENCING LAW MAY VIOLATE
9 FEDERAL DUE PROCESS, (RICHMOND V. LEWIS, 506 U.S. 40,50,113 S.CT.528). THE SUPREME
10 COURT IN RICHMOND V. LEWIS HELD ERROR IN THE STATES SENTENCING LAW IS A COGNIZABLE
11 FEDERAL HABEAS CLAIM WHEN "THE ERROR WAS SO ARBITRARY OR CAPRICIOUS AS TO CONSTIT-
12 UTE AN INDEPENDANT DUE PROCESS VIOLATION. (SEE ALSO JEFFERS V. LEWIS,497 U.S.769,
13 110 S.CT. 3092,3102).

14 APPLICABLE LAW:

15 A STATE VIOLATES A CRIMINAL DEFENDANTS DUE PROCESS RIGHT TO FUNDAMENTAL FAIRNESS IF
16 IT ARBITRARILY DEPRIVES THE DEFENDANT OF A STATE LAW ENTITLEMENT. (SEE LABOA,224 F
17 3d. AT 977(CITING) HICKS V. OAKLAHOMA, 447 U.S. 343). A STATE COURTS ARBITRARY DIS
18 REGARD OF THE STATE SENTENCING LAW AND IMPOSITION OF AN UNAUTHORIZED SENTENCE VIO-
19 LATES THE DEFENDANTS DUE PROCESS UNDER THE FEDERAL CONSTITUTION. (SEE WHALEN V. UN-
20 ITED STATES, 445 U.S. 648).

21 APPLICABLE LAW AND FACTS: APPLICABLE LAW AND FACTS

22 WHEN MORE THAN ONE OFFENSE ARISES FROM A SINGLE CRIMINAL UNDERTAKING, AND EACH OF-
23 FENSE IS COMMITTED AT VIRTUALLY THE SAME TIME, IN THE SAME PLACE, AND WITH THE SAME
24 PARTICIPANIS, THE PUNISHMENT SHOULD NOT BE COMPOUNDED(UNITED STATES V. PALAFOX,764 F.
25 2d. 562,563). LOOKING AT THE EVIDENCE IN A LIGHT MOST FAVORABL TO THE JUDGMENT, THE
26 EVIDENCE SHOWS THAT ALL THE PETITIONERS ALLEGED ACTS WERE DIRECTED TOWARD CONSUMA-
27 TION OF ONE CRIMINAL UNDERTAKING OF OBTAINING \$ 600.00.AND THE ALLEGED KIDNAPPING FOR
28 PURPOSES OF ROBBERY ASSOCIATED WITH THE ROBBERY VIRTUALLY OCCURRED AT THE SAME TIME

1 IN THE SAME PLACE, AND WITH THE SAME PARTICIPANTS. HERE, THE PROSECUTIONS THEORY
2 IN THIS CASE WAS: "THAT WHEN THE MOVEMENT STARTED, IT WAS TO FURTHER THAT GOAL OF
3 HIS TO GET ALL THE MONEY HE COULD FROM THEM"... "HIS ENTIRE GOAL DURING THIS WHOLE
4 PROCESS WAS TO ROB THEM". (SEE 2RT. 379, 17-24). DURING SENTENCING THE HONORABLE
5 JUDGE M.B. DONNER FOUND " IT WAS ONE CONTINUOUS COURSE OF CRIMINAL CONDUCT"(SEE 2RT.
6 470,19-20). DURING PETITIONERS RESENTENCING HE FURTHER SATEAETHAHT "HE FINDES THAT
7 THE CRIMES AND OBJECTIVES IN THIS CASE WERE ONE CONTINUOUS SERIES OF EVENTS". "I
8 DONT FIND THEM TO BE INDEOENDANT AND SEPARATE ACTS". "IT WAS ONE CONTINUING ACT,SE-
9 RIES OF ACTIONS... TO OBTAIN MONEY... AND THEY WERE NOT COMMITTED AT DIFFERENT TIM-
10 ES, IT WAS ALL AT THE EXACT SAME TIME FRAME". (SEE RESENTENCING TRANSCRIPT, PAGE 2).

11 FACT

12 HERE, THE RECORD SHOWS THAT PETITIONER MET THE REQUIREMENTS TO HAVE HIS COUNTS ST-
13 AYED ACCORDING TO THE STATE SENTENCING LAWS OF PENAL CODE § 654, WHICH STATES:
14 " AN ACT OR OMISSION THAT IS PUNISHABLE IN DIFFERENT WAYS BY DIFFERENT PROVISIONS
15 OF THE LAW SHALL BE PUNISHED UNDER THE PROVISION THAT PROVIDES THE LONGEST POTEN-
16 TIAL TERM OF IMPRISONMENT, BUT IN "NO CASE SHALL THE ACT OR OMISSION BE PUNISHED
17 UNDER MORE THAN ONE PROVISION". (SEE 1 WITKIN AND EPSTIEN,3 CAL. CRIM. LAW 4TH (CH-
18 APTER IV PUNISHMENTS); (SEE ALSO NEAL V. CALIFORNIA, (1960) 55 CAL.2d. 11,18, IN-
19 FRA § 272). YET THE TRIAL COURTS, AFTER ACKNOWLEDGING THESE FACTS, VIOLATED THEDEF-
20 ENDANTS DUE PROCESS RIGHT TO FUNDAMENTAL FAIRNESS AND ARBITRARILY DEPRIVED HIM OF
21 THE STATE LAW ENTITLEMENT OF PENAL CODE § 654 BY FAILING TO STAY COUNTS 5,6,7,9,10
22 AND 11. THEREBY IMPOSING AN ILLEGAL AND UNAUTHORIZED SENTENCE.(IT IS WELL SETTLED
23 THAT...THE STATE TRIAL COURT ACTS IN EXCESS OF IT'S JURISDICTION AND IMPOSES AN UN-
24 AUTHORIZED SENTENCE WHEN IT STAYS OR FAILS TO STAY EXECUTION OF A SENTENCE UNDER
25 PENAL CODE § 654.(PEOPLE V. PEREZ,SUPRA,23 CAL.3d,543,549,550,fn.3).

26 CONCLUSION OF GROUND THREE

27 PETITIONER CONCLUDES THAT SINCE THE ALLEGED ROBBERY AND KIDNAPPING FOR PURPOSE OF
28 ROBBERY VIRTUALLY OCCURED AT THE SAME TIME, IN THE SAME PLACE AND WITH THE INVOLV-

1 EMENT OF THE SAME PARTICIPANTS, THERE SHOULD, AS IN OTHER CASES, BE ONLY ONE PUNI-
2 SHMENT, BECAUSE MULTIPLE PUNISHMENTS WERE NOT INTENDED AND THEY VIOLATE THE FOUR-
3 EENT AMENDMENT RIGHT TO DUE PROCESS.(SEE UNITED STATES V. WILSON,781 F.2d 1438,14-
4 39 (9TH CIR. 1986) CITING UNITED STATES V. PALAFOX, 764 F.2d558 (9TH CIR. 1985)(en
5 banc). THIS PETITIONER THEREFORE PRAYS FOR RELIEF ON CLAIM THREE.

6 GROUND FOUR
7 COUNSELS CUMULATIVE ERRORS DEPRIVED PETITIONER OF HIS SIXTH AMENDMENT RIGHTS TO EF-
8 FECTIVE ASSISTANCE OF COUNSEL AND A FAIR TRIAL GUARANTEED BY THE UNITED STATES
9 CONSTITUTION.

10 APPLICABLE LAW:

11 THE SIXTH AMENDMENT GUARANTEES THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IN CR-
12 IMINAL PROSECUTIONS. TO OBTAIN REVERSAL OF A CONVICTION, THE DEFENDANT MUST PROVE
13 THAT(1) COUNSEL'S PERFORMANCE "FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS"
14 AND (2) COUNSEL'S DEFICIENT PERFORMANCE PREJUDICED THE DEFENDANT, RESULTING IN AN
15 UNRELIABLE OR FUNDAMENTALLY UNFAIR OUTCOME IN THE PROCEEDING. (SEE PADILLA V. KY.,
16 559 U.S.356,364 (2010); SEE ALSO STRICKLAND V. WASHINGTON, 466 U.S.668,687,-88,691
17 692). ALTHOUGH A SINGLE ERROR MAY CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL(CI-
18 TING)(KIMMELMAN V. MORRISON,477 U.S. AT 382,384). COUNSEL'S CUMULATIVE ERRORS CON-
19 STITUTE INEFFECTIVE ASSISTANCE OF COUNSEL. (SEE ALCALA V. WOODFORD, 334 F.3d 862;
20 EWING V. WILLIAMS, 596 F.2d AT 395: U.S. V. CHRONIC, 466 U.S. AT 657,fn.20). ERRORS
21 THAT MIGHT NOT BE SO PREJUDICIAL AS TO AMOUNT TO DEPRIVATION OF DUE PROCESS WHEN CONSID-
22 ERED ALON, MAY CUMULATIVELY PRODUCE A TRIAL SETTING THAT IS FUNDAMENTALLY UNFAIR.
(SEE THOMAS V. HUBBARD, 273 F.3d 1164,1180(9TH CIR. 2001)

23 APPLICABLE LAW:

24 COUNSEL HAS A DUTY TO COMMUNICAT FORMAL OFFERS FROM THE PROSECUTOR TO ACCEPT A PLEA
25 AND... WHERE SUCH AN OFFER IS NOT COMMUNICATED TO THE DEFENDANT, COUNSEL HAS NOT
26 RENDERED THE EFFECTIVE ASSISTANCE THE CONSTITUTION REQUIRES. (MO. V. FRYE,132 S.CT.
27 AT 1405,1408).FAILURE OF COUNSEL TO ADVISE HIS CLIENT OF PLEA BARGAIN CONSTITUTES
28 A DEVIATION FROM ACCEPTED NORMS AND IS INEFFECTIVE ASSISTANCE OF COUNSEL. (SEE UN-

1 ITED STATES EX REL CARUSO V. ZELINSKI, 689 F.2d AT 438).

2 DEFICIENT PERFORMANCE FACT

3 COUNSEL FAILED TO NOTIFY THE PETITIONER OF PLEA COLLOQUIALS BETWEEN HER AND THE PR
4 OSECTOR, COUNSEL FAILED TO COMMUNICATE PROSECUTORS WILLINGNESS TO ACCEPT PLEA OFF-
5 ERS AND FAILED TO ADVISE PETITIONER WHETHER TO PLEAD OR NOT. HAD IT NOT BEEN FOR
6 COUNSELS FAILURE TO RELAY PROSECUTORS AMENABLENESS TO PLEA BARGAIN, ITS A REASONAB
7 LE PROBABILITY PETITIONER WOULD HAVE PLEAD. (SEE 2RT. P.444, 17-28,455.1-5) (SEE
8 STRICKLAND, 466 U.S. AT 694, REASONABLE PROBABILITY OF DIFFERENT OUTCOME)(SEE ALSO
9 MO. V. FRYE, 132 S.CT.AT 1409 AND LAFFLER V. COOPER,132 S.CT.1376,1385 (2012) BOTH
10 HOLDING DEFENDANT PREJUDICED BY COUNSE'S FAILURE TO COMMUNICATE PLEA OFFER).

11 APPLICABLE LAW:

12 COUNSEL HAS A DUTY TO INVESTIGATE, FAILURE TO INVESTIGATE CONSTITUTES INEFFECTIVE
13 ASSISTANCE OF COUNSEL (STRICKLAND V. WASHINGTON, 466 U.S. 688).COUNSEL'S PERFORM-
14 ANCE WAS DEFICIENT FOR FAILING TO CONSULT AN EXPERT, (CARO V. WOODFORD, 280 F3d.
15 1247,1254,1256). FAILURE TO CONSULT AN EXPERT IS INEFFECTIVE ASSISTANCE OF COUNSEL.
16 (SEE DUNCAN V. ORNOSKI, 528 F.3d AT 1235).

17 DEFICIENT PERFORMANCE FACT

18 COUNSEL FAILED TO INVESTIGATE TJ06'S MENTAL ILLNESS BY CONSULTING WITH THE JUROR OR
19 AN EXPERT TO DETERMINE THE NATURE OF AND THE LEVEL OF SERIOUSNESS OF HER MENTAL DIS-
20 ORDER, OR TO DETERMINE THE EFFECT IT WOULD HAVE ON HER ABILITY TO PERFORM SATISFA-
21 CTORY JURY SERVICE, HAD IT NOT BEEN FOR COUNSEL'S FAILURE TO INVESTIGATE JURORS
22 MENTAL ILLNES, IT'S A REASONABLE PROBABILITY THE JUROR WOULD NOT HAVE BEEN ABLE TO
23 REMAIN ON THE PANEL AND ALLOW HER DECISION TO BE SWAYED BY HER MENTAL ILLNESS. (SEE
24 STRICKLAND V. WASHINGTON, 466 U.S. AT 694)(REASONABLE PROBABILITY OF DIFFERENT OUT-
25 COME).

26 APPLICABLE LAW:

27 FAILURE TO OBJECT CONSTITUTES DEFICIENT PERFORMANCE WHEN MEASURED AGAINST THE PROF-
28 ESSIONAL STANDARDS OF REASONABLENESS (STRICKLAND V. WASHINGTON, 466 U.S. 668).

DEFICIENT PERFORMANCE FACT

1 TJ06 INFORMED THE COURT SHE HAD A DISQUALIFYING BIAS (VICTIM OF ROBBERY AND COULD
2 NOT JUDGE FAIR DUE TO PAST EXPERIENCE WITH DRUG USERS [VOIR-DIRE PAGE 89]). YET THE
3 TRIAL COUNSEL FAILED TO MOVE TO STRIKE TJ06 WITH A CHALLENGE FOR CAUSE DUE TO BEING
4 ACTUALLY BIASED. BUT FOR COUNSEL'S FAILURE TO STRIKE THIS JUROR ITS A REASONABLE
5 PROBABILITY THAT TJ06 WOULD NOT HAVE BEEN ALLOWED TO REMAIN ON THE PANEL AND ALLOW
6 HER PERSONAL FEELING'S AND PREJUDICE TO TAINT THE JURY'S VERDICT. (SEE STRICKLAND,
7 466 U.S. AT 694)(REASONABLE PROBABILITY OF DIFFERENT OUTCOME).

8 APPLICABLE LAW:

9 DEFICIENT PERFORMANCE FOUND BY TRIAL COUNSELS FAILURE TO PRESENT DEFENCE REASONABLY
10 AND COMPETENTLY...PREJUDICE IS FOUND BY TRIAL COUNSEL'S DEFICIENT PRESENTATION OF
11 ALIBY.(ALCAL V. WOODFORD, 334 F.3d AT 870,872)(LORD V. WOOD, 184 F.3d AT 1095) DEF-
12 ICIENT PRESENTATION UNDERMINES CONFIDENCE IN THE OUTCOME(STRICKLAND V. WASHINGTON,
13 466 U.S. AT 694).

DEFICIENT PERFORMANCE FACT

14
15 HERE, COUNSEL FAILED TO CALL ALIBI WITNESS WHO GAVE STATEMENTS TO INVESTIGATOR CONCERNING
16 HER KNOWLEDGE OF THE ENCOUNTER, AND FAILED TO SOLICIT TESTIMONY CONCERNING
17 THE NATURE OF THE PHONE CALL RECEIVED BY AVAILABLE WITNESS. THESE TESTIMONIES WOULD
18 HAVE CORROBORATED THE DEFENDANTS TESTIMONY AND DEFENSE'S THEORY OF THE CASE.(BUT
19 FOR COUNSELS FAILURE TO INTRODUCE EXCULPATORY EVIDENCE CONTRADICTING THE PROSECUTIONS
20 STAR WITNESS TESTIMONY, REASONABLE PROBABILITY OF A DIFFERENT TRIAL RESULT.)
21 (SEE CANNEDY V. ADAMS, 706 F.3d 1148,1166 (9TH CIR. 2013).

CONCLUSION OF GROUND FOUR

22
23 EWING V. WILLIAMS, 597 F.2d AT 397 HELD THE LAW REQUIRES CONSIDERATION OF WHETHER,
24 ON THE ENTIRE RECORD THERE WAS PREJUDICE RESULTING FROM THE TOTAL PERFORMANCE OF
25 COUNSEL. PREJUDICE MAY RESULT FROM THE CUMULATIVE IMPACT OF MULTIPLE DEFICIENCIES;
26 WHERE SEVERAL SPECIFIC ERRORS ARE FOUND, IT IS THE DUTY OF THE COURT TO MAKE A FINDING
27 AS TO PREJUDICE, ALTHOUGH THIS FINDING MAY BE EITHER CUMULATIVE OR FOCUS ON
28 ONE DISCRETE BLUNDER IN ITSELF PREJUDICIAL.

CONCLUSION FOR GROUND FOUR CONTINUED

1 THE SUPREME COURT HAS IDENTIFIED NARROW CATAGORIES IN WHICH PREJUDICE IS PRESUMED;
2 WHEN COUNSEL ENTIRELY FAILS TO SUBJECT THE PROSECUTIONS CASE TO A MEANINGFUL ADVA-
3 RSARIAL TESTING, THE ADVARSARIAL PROCESS ITSELF BECOMES PRESUMPTIVELY UNRELIABLE.
4 (SEE STRICKLAND, 466 U.S. AT 692;ALSO CRONIC, 466 U.S. 648, 658). HERE, COUNSELS
5 ERROR'S WERE SO SERIOUS AS TO DEPRIVE THE PETITIONER OF A FAIR TRIAL WHOSE RESULTS
6 ARE RELIABLE.(QUOTING AND CITING RICHTER, 562 U.S. AT 103-104; ALSO STRICKLAND, 466
7 AT 689).COUNSELS OMISSIONS WERE PREJUDICIAL AND THESE ERRORS AFFECTED THE SUBSTAN-
8 TIAL RIGHTS WARRANTING RELIEF. (CITING AND QUOATING BROWN V. MEYERS, 137 F.3d.1154,
9 1158 (9TH CIR. 1998)). PETITIONER PRAYS THAT BASED ON THE ABOVE HE IS GRANTED REL-
10 IEF ON CLAIM FOUR OR ATLEAST AN EVIDENTIARY HEARING TO ALLOW TRIAL COUNSEL TO ACC-
11 OUNT AS TO WHY SHE ACTED OR FAILED TO ACT DURING PETITIONERS TRIAL PROCEEDINGS.

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17 HUMBLY SUBMITTED

18 LUKE CAINES, JR.

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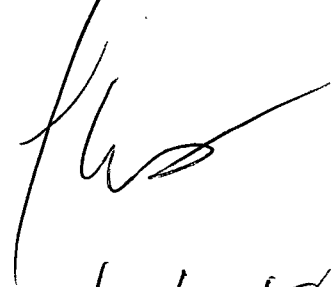
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CERTIFICATE

1 I, LUKE WAINE CAINES, THE PETITIONER IN THE ABOVE STATED MATTER DOES
2 HEREBY DECLARE THAT THE GROUDS IN THE PETITION ARE LIMITED TO INTER-
3 VENING CIRCUMSTANCES OF SUBSTANTIAL OR CONTROLING EFFECT OR TO OTHER
4 SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED.

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12 SINCERELY,
13 LUKE CAINES, PETITIONER
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11-6-18